

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

This case has previously been before the Board.² The facts and circumstances as set forth in the Board's prior decision are incorporated herein by reference. The relevant facts are as follows.

On April 11, 2016 appellant, then a 59-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on March 23, 2016 she sustained an emotional condition in the performance of duty. Her supervisor, M.O., advised on the reverse side of the claim form that she had experienced an anxiety attack after "overhearing a conversation." Appellant stopped work on March 24, 2016.

In a March 30, 2016 statement, appellant related that she was dumping mail on March 23, 2016 when she heard a coworker, A.M., screaming and swearing because he believed that she was not working with sufficient speed. Her husband and coworker, M.K., considered telephoning the police because of A.M.'s actions, and told a supervisor that A.M. was verbally harassing her and using the F-word and MF-word. The supervisor spoke with A.M. but his volume and swearing increased. Appellant related that A.M.'s actions had triggered her anxiety and post-traumatic stress disorder (PTSD) such that she almost lost consciousness. She sought treatment in the emergency room due to his accusation that she was too slow and his use of profanity.

In an April 1, 2016 incident report, A.M. related that he had noticed that mail was coming down slowly and so he had complained about the person dumping the mail. M.K. yelled for the police. A.M. denied interacting with M.K. or appellant, noting that she was in front of the belt a distance away.

On April 22, 2016 the employing establishment controverted the claim, asserting that appellant "underwent a self-generated reaction (anxiety attack) to a conversation she may have overheard taking place between employees (including her husband who is also a coworker). This incident remains under investigation by [the employing establishment]."

In an undated statement received by OWCP on April 25, 2016, M.O. related that another supervisor had advised her on March 23, 2016 that M.K. had threatened to telephone the police about A.M.'s behavior, asserting that he had used profanity and raised his voice. She noted that A.M. had denied speaking to appellant or M.K. and instead had maintained that he had spoken with another coworker, M.G. about her delay in keeping the belt full. M.O. related that appellant had not seemed upset until she began to leave, at which point she began crying and fell.

In a May 16, 2016 statement, appellant again described the events of March 23, 2016. She advised that she heard A.M. scream and swear. Appellant could not "completely understand the content of his rampage." Her husband had informed her that he was speaking about her because she had not dumped the mail quickly enough. Appellant related that she heard A.M. use the MF-word in reference to the dumper. She indicated that she was the only dumper working, so she knew she was the target of his words. Appellant asserted that the "hostility and aggression he

² Docket No. 17-1780 (issued March 14, 2018).

displayed were [so] severe that it called for the attention of four managers who were in the building.”

By decision dated June 8, 2016, OWCP denied appellant’s emotional condition claim as she had not established an injury in the performance of duty. It found that she had not established a compensable factor of employment.

Appellant, on July 12, 2016, requested reconsideration. In a decision dated February 28, 2017, OWCP denied modification of its June 8, 2016 decision. It found that appellant failed to corroborate her account of the events on March 23, 2016 and thus had not established verbal abuse or harassment. OWCP also noted that an emotional reaction to gossip was not a compensable work factor.

Appellant appealed to the Board. By decision dated March 14, 2018, the Board set aside the February 28, 2017 decision.³ The Board found that OWCP had not requested information from the employing establishment regarding its investigation into the March 23, 2016 incident. The Board remanded the case for OWCP to further develop the factual evidence.

In a March 15, 2018 development letter, OWCP requested that the employing establishment provide any relevant information regarding its investigation of the March 23, 2016 incident. On March 26, 2018 it again requested that the employing establishment provide information regarding its investigation of the March 23, 2016 incident, including witness statements and a description of any actions taken in response to the incident.

In a March 28, 2018 response, the employing establishment resubmitted statements previously provided with the original claim form.

An OWCP claims examiner, in a June 26, 2018 e-mail, requested that the employing establishment provide “a statement for the file that states that the investigation was complete and the allegations were unfounded.”⁴

In a July 11, 2018 e-mail, the employing establishment related, “Based on the results of the investigation by management it was found the allegations made by the claimant were not supported and no further administrative action was warranted.”

By decision dated July 12, 2018, OWCP denied appellant’s emotional condition claim. It found that the evidence was insufficient to establish any compensable factors of employment.

On appeal appellant argued that she had experienced a compensable work factor as she experienced an emotional reaction to profanity used while she was performing her work duties.

³ *Id.*

⁴ An OWCP claims examiner submitted a similar request in a June 27, 2018 e-mail.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁵ has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁶ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁷

To establish an emotional condition in the performance of duty, a claimant must submit: (1) factual evidence identifying an employment factor or incident alleged to have caused or contributed to his or her claimed emotional condition; (2) medical evidence establishing that he or she has a diagnosed emotional or psychiatric disorder; and (3) rationalized medical opinion evidence establishing that the accepted compensable employment factors are causally related to the diagnosed emotional condition.⁸

Workers' compensation law does not apply to each and every injury or illness that is somehow related to an employee's employment. In the case of *Lillian Cutler*,⁹ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition arising under FECA. There are situations where an injury or an illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.¹⁰ When an employee experiences emotional stress in carrying out his or her employment duties and the medical evidence establishes that the disability resulted from an emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability results from his or her emotional reaction to a special assignment or other requirement imposed by the employing establishment or by the nature of the work.¹¹

Allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim.¹² Where the claimant alleges compensable factors of employment, he or she must

⁵ *Supra* note 1.

⁶ *A.J.*, Docket No. 18-1116 (issued January 23, 2019); *Gary J. Watling*, 52 ECAB 278 (2001).

⁷ 20 C.F.R. § 10.115(e); *M.K.*, Docket No. 18-1623 (issued April 10, 2019); *see T.O.*, Docket No. 18-1012 (issued October 29, 2018); *see Michael E. Smith*, 50 ECAB 313 (1999).

⁸ *See S.K.*, Docket No. 18-1648 (issued March 14, 2019); *M.C.*, Docket No. 14-1456 (issued December 24, 2014); *Debbie J. Hobbs*, 43 ECAB 135 (1991); *Donna Faye Cardwell*, 41 ECAB 730 (1990).

⁹ 28 ECAB 125 (1976).

¹⁰ *See G.R.*, Docket No. 18-0893 (issued November 21, 2018).

¹¹ *Supra* note 6.

¹² *See B.O.*, Docket No. 17-1986 (issued January 18, 2019).

substantiate such allegations with probative and reliable evidence.¹³ Personal perceptions alone are insufficient to establish an employment-related emotional condition.¹⁴ On the other hand, the disability is not covered where it results from such factors as an employee's fear of a reduction-in-force or his or her frustration from not being permitted to work in a particular environment, or to hold a particular position.¹⁵

For harassment or discrimination to give rise to a compensable disability under FECA, there must be probative and reliable evidence that harassment or discrimination did in fact occur.¹⁶ Mere perceptions of harassment are not compensable under FECA.¹⁷

OWCP's procedures provide:

"An employee who claims to have had an emotional reaction to conditions of employment must identify those conditions. The CE [claims examiner] must carefully develop and analyze the identified employment incidents to determine whether or not they in fact occurred and if they occurred whether they constitute factors of the employment. When an incident or incidents are the alleged cause of disability, the [claims examiner] must obtain from the claimant, agency personnel and others, such as witnesses to the incident, a statement relating in detail exactly what was [stated] and done. If any of the statements are vague or lacking detail, the responsible person should be requested to submit a supplemental statement clarifying the meaning or correcting the omission."¹⁸

OWCP's regulations provide that an employer who has reason to disagree with an aspect of the claimant's allegation should submit a statement that specifically describes the factual argument with which it disagrees and provide evidence or argument to support that position.¹⁹

ANALYSIS

The Board finds that the case is not in posture for decision.

Appellant attributed her emotional condition to A.M. screaming and swearing at her on March 23, 2016 because she was slow dumping mail. On prior appeal, the Board noted that the

¹³ *Id.*

¹⁴ *M.R.*, Docket No. 18-0305 (issued October 18, 2018).

¹⁵ *A.C.*, Docket No. 18-0507 (issued November 26, 2018).

¹⁶ *S.B.*, Docket No. 18-1113 (issued February 21, 2019).

¹⁷ *Id.*

¹⁸ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Performance of Duty*, Chapter 2.804.17(j) (July 1997); *see also D.B.*, Docket No. 18-0537 (issued September 12, 2018).

¹⁹ 20 C.F.R. § 10.117(a); *see* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Development of Claims*, Chapter 2.800.7(a)(2) (June 2011) (in certain types of claims, such as a stress claim, a statement from the employer is imperative to properly develop and adjudicate the claim).

employing establishment had indicated, in an April 22, 2016 statement, that an investigation into the March 23, 2016 incident was ongoing. The Board remanded the case for OWCP to obtain information from the employing establishment regarding the investigation.

On remand, OWCP requested that the employing establishment provide any relevant information regarding its investigation in the March 23, 2016 employment incident, including any witness statements that it had obtained and any actions taken in response to the incident. The employing establishment failed to respond to its request. On June 26, 2018 OWCP requested that the employing establishment advise that the investigation was complete and the allegations unfounded. In a July 11, 2018 response, the employing establishment indicated that appellant's allegations were unsupported.

As discussed, OWCP's procedures provide, "When an incident or incidents are the alleged cause of disability, the CE must obtain from the claimant, agency personnel and others, such as witnesses to the incident, a statement relating in detail exactly what was said and done. If any of these statements are vague or lacking detail, the responsible person should be requested to submit a supplemental statement clarifying the meaning or correcting the omission."²⁰ Its regulations further provide that an employer who has reason to disagree with an aspect of the claimant's allegations should submit a statement that specifically describes the factual argument with which it disagreed and provide evidence or argument to support that position.²¹ The July 11, 2018 e-mail response from the employing establishment was conclusory in nature and lacked any supporting detail regarding the result of its investigation into the March 23, 2016 incident.

As the Board ordered in the prior decision, OWCP shall request that the employing establishment provide any relevant evidence to which it has access, including the results of its investigation of the March 23, 2016 incident.²² On remand OWCP shall develop the evidence regarding the claimed emotional condition in accordance with the Board's prior decision and OWCP's procedures.²³ If the employing establishment does not appropriately respond to OWCP's request for additional information, OWCP may accept appellant's allegations as factual in accordance with its regulations.²⁴

CONCLUSION

The Board finds that the case is not in posture for decision.

²⁰ *Supra* note 17.

²¹ 20 C.F.R. § 10.117(a); *see also* *L.D.*, Docket No. 15-1831 (issued September 21, 2016).

²² *Supra* note 2.

²³ *Supra* note 17.

²⁴ 20 C.F.R. § 10.117(b); *L.D.*, *supra* note 21.

ORDER

IT IS HEREBY ORDERED THAT the July 12, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion of the Board.

Issued: October 1, 2019
Washington, DC

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board